

## 1 of 3

1 directed to ESD's actions allege that: (1) ESD improperly permitted the telephonic hearsay  
2 testimony of an unnamed witness ("a lead supervisor and manager") on behalf of Plaintiff's  
3 employer at the August 2011 hearing; (2) the witness perjured himself; and (3) ESD's  
4 adjudicator, Patricia, "lied" and ruled against him arbitrarily.<sup>1</sup> (*See* Compl. 2, May 15, 2014,  
5 ECF No. 1). Plaintiff demands the return of \$2100, additional benefits wrongfully denied,  
6 noneconomic damages for pain and suffering, and punitive damages.

7 ESD has moved to dismiss for failure to state a claim, insufficient service of process, lack  
8 of personal jurisdiction, Eleventh Amendment immunity, claim preclusion, judicial immunity,  
9 and lack of subject matter jurisdiction. Responses were due on June 23, 2014. Plaintiff did not  
10 timely file any brief identified as a "response" or an "opposition," but he filed a "notice" on June  
11 17, 2014, which the Court will treat as an opposition.

12 The Court grants the motion to dismiss. The Court has no appellate jurisdiction over  
13 ESD. The Complaint must therefore rest upon the Court's original jurisdiction. Plaintiff alleges  
14 no statutory basis for the Court's jurisdiction. There can be no jurisdiction under 28 U.S.C.  
15 § 1332, because ESD is a citizen of no state. There could be jurisdiction under 42 U.S.C. § 1983  
16 if Plaintiff meant to bring such a claim, and that is how the Court interprets the Complaint, i.e.,  
17 as a claim for the violation of procedural due process pursuant to § 1983. However, there is a  
18 two-year statute of limitations for § 1983 claims in Nevada. *See Perez v. Seevers*, 869 F.2d 425,  
19 426 (9th Cir. 1989) (citing Nev. Rev. Stat. § 11.190(4)(e)). Although the statute is an affirmative  
20 defense, the applicability of the defense here appears on the face of the Complaint and the  
21 attachments thereto, making dismissal appropriate without further fact-finding. *See, e.g., Hyatt*  
22 *Chalet Motels, Inc. v. Carpenters Local 1065*, 430 F.2d 1119, 1120 (9th Cir. 1970). Even an

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23 <sup>1</sup> The allegations are somewhat difficult to extract, as the Complaint is written in train-of-  
24 thought fashion and with little punctuation.

1 otherwise proper §1983 claim would be barred by the Eleventh Amendment here. Although  
2 Congress has the power under § 5 of the Fourteenth Amendment to restore federal jurisdiction in  
3 some cases over suits against the States where the Eleventh Amendment otherwise prevents it,  
4 Congress did so via § 1983 only with respect to defendants who are “person[s],” and an  
5 administrative arm of a state, such as ESD, is not a “person” under § 1983. *See, e.g., Maldonado*  
6 *v. Harris*, 370 F.3d 945, 951 (9th Cir. 2004) (citing *Will v. Mich. Dep’t of State Police*, 491 U.S.  
7 58, 70 (1989)).

8 **CONCLUSION**

9 IT IS HEREBY ORDERED that Motion to Dismiss (ECF No. 4) is GRANTED.

10 IT IS FURTHER ORDERED that the Clerk shall enter judgment and close the case.

11 IT IS SO ORDERED.

12 Dated this 23rd day of July, 2014.

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15 ROBERT C. JONES  
16 United States District Judge  
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